

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA

Lee Edward Ellerbee,	)	Civil Action No. 6:19-1620-BHH
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	<b><u>OPINION AND ORDER</u></b>
	)	
SCDC Medical Staff, Gregory Furness,	)	
Warden Stonebreaker,	)	
	)	
Defendants.	)	
_____	)	

This matter is before the Court on the Report and Recommendation (ECF No. 18) of United States Magistrate Judge Kevin F. McDonald recommending that Plaintiff's motion to remand (ECF No. 16 ) be denied, and the instant action be dismissed without prejudice pursuant to Fed. R. Civ. P. 41(a)(1)(i). After carefully reviewing the Report and Recommendation, the Court adopts the Report and Recommendation in full.

Magistrate Judge McDonald issued a Report setting forth the filing history of this case, and concluded that it appears Plaintiff no longer wishes to pursue this action in this court so that he may pursue it in state court. (ECF No. 18 at 2.) Plaintiff filed no objections and the time for doing so expired on August 19, 2019.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. See *Mathews v. Weber*, 423 U.S. 261 (1976). The Court is charged with making a *de novo* determination of any portion of the Report and Recommendation of the Magistrate Judge to which a specific objection is made. The Court may accept, reject, or modify, in whole or in part, the recommendation made by the

Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. See 28 U.S.C. § 636(b). The Court reviews the Report and Recommendation only for clear error in the absence of an objection. See *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation”) (citation omitted).

After reviewing the motion and response, the record, and the Report and Recommendation of the Magistrate Judge, the Court finds no clear error. Accordingly, the Court adopts and incorporates the Report and Recommendation (ECF No. 18) by reference into this order. It is therefore ORDERED that Plaintiff’s motion to remand (ECF No. 16) is DENIED, and this action is dismissed without prejudice pursuant to Fed. R. Civ. P. 41(a)(1)(i).

IT IS SO ORDERED.

/s/ Bruce Howe Hendricks  
United States District Judge

Greenville, South Carolina  
August 23, 2019

\*\*\*\*\*

#### **NOTICE OF RIGHT TO APPEAL**

The parties are hereby notified that any right to appeal this Order is governed by Rules 3 and 4 of the Federal Rules of Appellate Procedure.